IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10562 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

INDO NIPPON CHEMICAL CO LTD.

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 10562 of 2002
MR PARESH M DAVE for Petitioner No. 1-2
MR DN PATEL for Respondent No. 1-3

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE K.M.MEHTA

Date of decision: 11/12/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

Rule. Service of rule is waived by Shri D.N. Patel, learned Sr. Central Government Standing Counsel. At the request of the learned advocates, the petition is finally heard today.

2. The grievance, which has been ventilated in this petition, is with regard to non-compliance of an order dated 22.2.2002 passed by this court in the case of the assessee in Special Civil Application No. 1955/99. It has been submitted by learned advocate Shri P.M. Dave appearing for the petitioners that by virtue of the judgment delivered in the above-referred petition, the respondent authorities were directed to allow restoration of Modvat credit of Rs. 41,18,212/- in favour of petitioner no.1. In spite of the said direction given by this court, still the respondent authorities have neither made payment nor made adjustment as directed and, therefore, the petitioners have been constrained to approach this court. It has been also submitted by learned advocate Shri Dave that the said judgment had been challenged by the Department by filing an SLP before the Hon'ble Supreme Court, but the said SLP has already been rejected.

3. It has been thereafter submitted by the learned advocate that in pursuance of the above judgment delivered by this court, when the petitioners had approached the respondent authorities, respondent No. 3 had passed an order dated 13.9.2002, whereby it has been observed that in pursuance of direction given by this court in Special Civil Application No. 1955/99 the said respondent proposed to allow restoration of Modvat credit of Rs. 41,18,212/-, but till today the said amount, after deducting the amount which might be payable by petitioner no.1, has not been paid to petitioner no.1 in cash. It has been submitted by the learned advocate that in view of the order passed by this court in Special Civil Application No. 1955/99, there was no need to pass any further order but what was required to be done by the respondent authorities was to make the payment as directed by this court.

4. In pursuance of notice issued by this court, learned Sr. Standing Counsel Shri D.N. Patel has appeared for the respondents. It has been submitted by him that the petitioners are under a misconception that the amount, which has become payable under the order of this court, is to be paid in cash. It has been submitted

by him that the amount, which is to be paid under the direction of this court, can be paid either in cash or by way of adjustment, as observed by this court. He has placed on record an affidavit-in-reply filed by respondent No. 3. In the said affidavit-in-reply it has been stated as to how the amount payable by the petitioners was being adjusted from personal ledger account (PLA) of petitioner No. 1. It has been submitted by the learned Standing Counsel that as and when any amount will become payable by the petitioner unit, the amount so payable shall be adjusted against the amount which is to be paid to petitioner no.1 under the order of this court.

5. He has also drawn our attention to Government Notification No. 85/87-C.E., dated 1st March 1987 as amended from time to time under Rule 57F of the Central Excise Rules, 1944. It has been submitted by him that as per the provisions of the said rule and the notification, at the end of every quarter in a year, the amount which has to be refunded to the assessee is to be adjusted and if any amount remains payable by the department to the assessee at the end of the quarter, the assessee has to submit an application asking for the amount of refund and as and when such an application is made by the assessee at the end of the quarter, the amount payable to the assessee is determined by the Department and the said amount is paid to the assessee.

6. He has, thus, submitted that as and when the petitioners shall submit an application for refund as per the provisions of Rule 57F of the Central Excise Rules read with the notification, the respondent authorities shall determine and pay the amount to the assessee. Thus, in a nutshell, the stand of the respondent authorities is that at the end of the quarter, the petitioners have to submit an application and as and when the application for refund is submitted by the respondent authorities, the amount payable to petitioner no.1 shall be determined and shall be paid in accordance with law.

7. We have heard the learned advocates and have also perused the judgment referred to hereinabove. Looking to the facts of the case, it appears that petitioner no.1 had to approach this court in the past as it was not given credit of the amount, which it was entitled to. This court, ultimately, came to the conclusion that petitioner no.1 was entitled to Modvat credit of Rs. 41,18,212/- and, therefore, it was directed that the said amount should be paid in cash or by adjustment towards its recurring liability. It is true that this court has

directed the respondent authorities to make the payment in cash or by way of adjustment. Looking to the said fact, it cannot be said that petitioner no.1 had a right to demand cash. However, the adjustment, which is to be made by the respondent authorities, must be made as soon as possible and, in our opinion, it would be just and proper to direct the respondent authorities to make the adjustment on 31.12.2002 so as to ascertain what amount is required to be paid to the petitioners as on 31.12.2002.

8. Without submission of any application for refund by the petitioners, the respondent authorities shall determine the total amount which is at the credit of petitioner no.1 in its PLA as on 31.12.2002 after adjusting the amount payable by it to the respondent authorities. The amount, which might be ultimately ascertained at the credit of petitioner no.1 as on 31.12.2002, shall be paid to it on or before 31.1.2003. It is clarified that it would not be necessary for the petitioners to make any application for getting the amount of refund as provided under Rule 57F of the Central Excise Rules as the petitioners have already indicated their desire in this petition that prtitioner no.1 would like to have the amount payable to it in cash. This petition shall be treated as an application for refund and without any further application from the petitioners, the amount, which might be determined as payable to the petitioners as on 31.12.2002, shall be paid on or before 31.1.2003.

9. In view of the above direction, the petition stands disposed of as allowed. Rule is made absolute to the above extent with no order as to costs.

Direct service to Respondent No. 3 is permitted.

(A.R. Dave, J.)

(K.M. Mehta, J.)

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